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unreviewable decision is rendered by the court on that appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

PROCEDURES FOR CONSIDERING APPLICATIONS

§ 1023.320 Filing and service of documents.

Any application for an award, or other pleading or document relating to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the underlying proceeding, except as provided in §1023.311(b) for confidential financial information.

§ 1023.321 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought may file an answer to the application. Unless agency counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Further extensions may be granted by the presiding administrative judge upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.322 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the pro-

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ceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1023.325.

§ 1023.323 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1023.324 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded, in accordance with the agency's standard settlement procedure. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1023.325 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or, on his or her own initiative, the presiding administrative judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole, including the contracting

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officer Appeal File and supplements filed pursuant to Rule 4 of the Board's Rules of Practice, 10 CFR part 1023, which is made in the covered proceeding for which fees and other expenses are sought.

(b) A request that the presiding administrative judge order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 1023.326 Board decision.

The Board shall issue its decision on the application as expeditiously as is practicable after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make the award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1023.327 Reconsideration.

Either party may seek reconsideration of the decision on the fee application in accordance with 10 CFR 1023.120, Rule 27.

[57 FR 53542, Nov. 12, 1992, as amended at 62 FR 24808, May 7, 1997]

§ 1023.328 Judicial review.

Judicial review of a final Board decision on an application for an award may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1023.329 Payment of award.

An applicant seeking payment of an award shall submit to agency counsel a copy of the Board's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Agency counsel will forward the submission to the appropriate disbursing official. The agency will pay the amount awarded to the applicant within 60 days.

PART 1024—PROCEDURES FOR FINANCIAL ASSISTANCE APPEALS

Sec.

1024.1 Scope and purpose.

1024.2 Authority.

1024.3 General.

1024.4 Rules of procedure.

AUTHORITY: Dept. of Energy Organization Act, Pub. L. 95-91, 91 Stat. 577 (42 U.S.C. 7101, et seq.); E.O. 10789; Pub. L. 95-224, 92 Stat. 3 (41 U.S.C. 501-509).

SOURCE: 45 FR 29764, May 5, 1980, unless otherwise noted.

§ 1024.1 Scope and purpose.

These procedures establish a process permitting recipients of financial assistance to appeal adverse final decisions made by financial assistance officers or contracting officers. The objective is to provide a timely, just, and inexpensive resolution of disputes involving grants, cooperative agreements, loan guarantees, loan agreements, or other financial assistance instruments.

§ 1024.2 Authority.

The authority of the Board derives from direct delegation of the Secretary to hear and decide finally for the Department appeals from any decision brought before it on disputes arising under financial assistance agreements.

§ 1024.3 General.

(a) A recipient or party to a grant, cooperative agreement, loan guarantee or agreement, or other such financial assistance may have a right to appeal disputes with the Department. Such a right may be set forth in statutes, in Departmental regulations dealing with the type of financial assistance involved, or in the agreement itself.